

From: Gail Farmer
To: Staci Skigh-Layman
Subject: Fwd: Confidential
Date: Thursday, September 28, 2017 7:30:43 AM

FYI

Sent from my iPhone

Begin forwarded message:

From: [] < [] >
Date: September 27, 2017 at 10:41:56 PM PDT
To: <farmer@cwu.edu>
Subject: Confidential

Hi Gail,

I believe you are the person in charge of the investigation of Brian Carroll; I want to reach out and make sure you are aware of my position on this.

First of all, I want to state that I am absolutely not filing a complaint against Brian Carroll. Neither am I filing a complaint against the History Department, the College of Arts and Humanities, or Central Washington University. The relationship between myself and Brian Carroll was completely consensual, and I was [] years old in [], when our relationship began. I have absolutely no intention to file a complaint against Brian Carroll now, or at any point in the future, nor have I ever filed a complaint against him with the university or any other party.

Although we did not disclose the nature of our relationship, I also want to stress that we took steps wherever possible to mitigate any conflicts of interest. I took the last requirements I had within the History Department with other professors and completed [] with another professor. Brian Carroll did not oversee any funding that went to me. I realize that we should have disclosed our relationship, but I was concerned for his safety if we did so, because of his marriage. Again, I recognize now that my concern was perhaps overwrought, but nonetheless we did try to reduce the potential conflicts of interest wherever possible.

If you have any questions or would like to discuss this further, please do not hesitate to contact me. I regret that I cannot come back to Ellensburg to request or submit to an interview, but my course of study here makes that impossible. I will, however, comply with your investigation in any way possible.

Sincerely,

[]

Katherine Frank, Provost
Office of the Provost
Central Washington University
400 E. University Way
Ellensburg, WA 98926

October 21, 2017

Dear Provost Frank:

I would like to respectfully submit to you this reply to Gail Farmer's "Investigative Report" regarding allegations of violating the university's conflict of interest policy that have been made against me, dated 10/16/2017. First, I would like to take this opportunity to apologize for the harm, confusion, and consternation this incident has caused to a number of people involved and to the university. I am deeply sorry for my actions, for which I can only blame personal and marital distress. In the future I will steer clear of anything remotely constituting a conflict of interest in regards to relationships or any other matter. In the future, I will do my best to remain above reproach, and faithfully and professionally represent CWU's ideals and goals, as I have done in a variety of ways and capacities exclusive of this incident.

I would like to thank Gail Farmer for her professionalism, and, for the most part, I agree with the basic facts presented in her thorough report that I received on 10/18/2017. At the current time I do not wish to appeal her findings through a review by the Equal Opportunity Committee. However, I do politely want to clarify and explain a few things to you that I think were not presented in their proper context in the report. I think it will prove helpful in clearing up some matters. In summary, the charges all relate to disclosing current or past relationships in order avoid conflicts of interest. I agree with the first of Gail's findings on page 7-8, which I have admitted to on several occasions. My concerns have to do with her second and third findings, which I do not think accurately reflect the circumstances.

I certainly now realize that I violated the conflict of interest policy in regard to disclosing my consensual relationship with Student 1 (as she is referred to in the report) while she was my [] from late [] until she graduated in []. As this relationship was extramarital in nature, I did not disclose the relationship at the time in order to protect my marriage. However, as the report also shows, Student 1 and I did take a number of steps to mitigate potential conflicts of interest (p. 4-5), but I obviously stopped short of disclosing or discontinuing the relationship. I take full responsibility for that significant lapse of judgement and now realize that the steps I took to mitigate potential conflicts did not fully negate the fact that there were important steps that I did not take. I should have either discontinued the relationship or disclosed it through the proper channels. This mistake will never happen again.

However, in regards to my relationship with Student 2 (as she is referred to in the report), I am troubled by what appear to be discrepancies in university procedures for disclosing past relationships. First, I wish to reiterate that Student 2, in fact, and as the report shows, was not a student at the time the relationship occurred. Nor has she filed any complaint against me or the university. This very short-lived, consensual relationship was discontinued before the student entered the [] program in []. I did not serve as her [] or as a member of her [] committee. Nor did I

deny, as the report states, that the student later took a class from me. I may just have just failed to mention it, but, to my recollection, the topic never specifically came up (Dan Lipori, my union representative who accompanied me to the meeting, said he does not remember the question coming up either). I was not trying to hide anything. I was very open and honest with Gail. Indeed, she verbally thanked me for being so after the interview and again after our October 18 meeting.

I did not report this relationship after the fact when Student 2 later enrolled in my course in [1] quarter [1]. While I now realize the passage from Article 14 of the CBA, cited in the report, states that faculty should not grade or otherwise supervise a student "with whom they have or *have had*" an intimate relationship (p. 7), my actions were guided instead by what was laid out in university policy CWUR 1-30-080 (Conflict of Interest in Relationship Procedures), cited on pages 6 and 7. While ignorance of an older policy is certainly no excuse for violating it, I assumed the newer university policy and the one outlined in the CBA were either the same, or that the later one superseded the older. The newer CWU 1-30-080 states that "If a conflict occurs, the first possibility for eliminating the conflict of interest is to discontinue the consensual relationship" (p. 7), which is what I did. The relationship between myself and Student 2 ended *before* she even began attending the university. CWUR 1-30-080 states that disclosure to supervisors is only then necessary if "discontinuing . . . or eliminating the conflict of interest is achievable." I did end the relationship, and so did not see the need to disclose it. The policy outlined no further action on my part being necessary. I felt I was following the most current policy and procedures regarding conflicts of interest and relationship reporting.

Charge 3 in the report states that I did not disclose to any CWU dean that I was having a relationship with Student 1 (who was then no longer a student) when they applied to work at the Thorp Mill Historical Society's museum in: [1]. While CWU has an ongoing relationship with the Thorp Mill, I can't see how this is relevant to the investigation. First, while Thorp Mill (a 501c non-profit organization) has an MOU with CWU which governs a [1] : assistantship at the Mill (during the academic year only), the MOU has nothing to do with the Mill's summer hiring. While I do report to CWU my involvement with the Mill as part of my community service activities, I receive no workload release for my involvement, and, importantly, the Mill is a separate, outside organization. Student 1 was no longer a student at CWU when this took place, nor had she been for approximately a year when she applied for summer work at the Mill museum.

The decision to hire Student 1 at the Mill was based on her prior experience volunteering at the Mill (she was well known to board members), and her letter of application to the board. The decision to hire her (and the other two summer docents) was a consensus decision reached by the thirteen-member board—a unanimous vote, to my recollection. There were three positions available (as in the previous summer) and three people applied. All were hired, based on their strengths as applicants and the fact that each was known to the board through past activity or employment at the mill. I did not forward a list of candidates' names as the report states. The supplemental attachments (board meeting minutes) show I was merely tasked with surveying what hours the three candidates who had applied were available to work. I also later seconded a motion authorizing pay rates for the summer employees, who were already hired at that point (Mill bylaws require the board vote on any expenditure exceeding \$50). Again, I did not manipulate voting, sway the discussions, or force my choices for summer employees on the board. I did not misuse my position in the matter. I did not see that perceived or potential conflicts of interests relating to my involvement in another, separate organization needed to be reported to CWU, especially when the person in question was not a student or employee at CWU, when neither

university funds nor academic credit were involved, and when the person was treated exactly the same in hiring as every other candidate who applied for the position that season.

Again, I fully accept responsibility for the first charge in the report. I made a mistake. I should have ended the relationship with Student 1 and disclosed it. I am deeply sorry for this. In early September I voluntarily reported the relationship to my department head, and, at that time, attempted to schedule a meeting with my dean to disclose the matter. However, as to the second charge, I truly felt I was following the most current, relevant policy on conflict of interest. I don't understand the last charge, for three reasons: the relationship in question was outside CWU; it was with someone who was not a student; and I did not and was not in a position to influence her hire or job conditions in any way.

Please consider both my contrition and these circumstances in your disciplinary decision.

Sincerely,

Brian D. Carroll

Brian D. Carroll, Ph.D.
Associate Professor
Department of History
Central Washington University
400 E. University Way
Ellensburg, WA 98926

Chery Byers

From: Charlene Andrews
Sent: Friday, December 22, 2017 8:40 AM
To: Alan Smith_ATG
Subject: Grievance 17-07-G Level One Response
Attachments: 17-07-G_Carroll_Level One Response.pdf

Hi Alan,

Attached is a copy of the level one response for the Carroll grievance.

Charlene

Charlene Andrews
Faculty Relations Coordinator

Office of the Provost/VP for Academic and Student Life
400 East University Way
Ellensburg, WA 98926-7503
Barge Hall, Room 302
Office: (509) 963-1271 • Fax: (509) 963-2025



Katherine Frank
Provost / Vice President for Academic and Student Life
Central Washington University
400 E. University Way
Ellensburg, WA 98926

November 17, 2017

Dear Provost Frank:

I am writing to resign from my position as tenured associate professor in the Department of History at Central Washington University, effective immediately. I do so for personal and family reasons and to pursue professional opportunities elsewhere.

I have enjoyed my time at CWU and took great satisfaction in helping to further its mission. Since joining the history faculty in 2010, I found the department to be a professional and collegial environment. Being part of it was rewarding in no small part thanks to the capable leadership of a number of department heads, particularly Professor Roxanne Easley.

I thank both the faculty and students of the Department of History and the American Indian Studies (AIS) program for their encouragement and support during my time at CWU. I was involved with AIS for five years and was privileged to be director of the program in 2016 and 2017. It was an honor to be part of both programs. I wish the Department of History, the College of Arts and Humanities, and the American Indian Studies program the best of luck achieving their programmatic objectives and aims in the future.

Best Regards,

Brian D. Carroll

Brian D. Carroll, Ph.D.
Associate Professor of History
Central Washington University
400 E. University Way
Ellensburg, WA 98926

RESIGNATION AND RELEASE AGREEMENT

This **RESIGNATION AND RELEASE AGREEMENT** ("Agreement") is entered into by and between **CENTRAL WASHINGTON UNIVERSITY** ("CWU"), CWU faculty member **BRIAN CARROLL** ("Faculty Member"), and **UNITED FACULTY OF CENTRAL WASHINGTON UNIVERSITY** ("UFC").

1. Recitals. This Agreement is made in consideration of the mutual undertakings set forth herein and is intended to settle all actual or potential disputes or claims that may arise from or relate to the employment relationship between CWU and Faculty Member, and the termination thereof.

2. Settlement Terms. Faculty Member, CWU, and UFC hereby agree to the following settlement terms. Such terms shall be Faculty Member's sole and complete consideration from CWU in return for Faculty Member's release of claims.

2.1 Resignation. Faculty Member offers to resign Faculty Member's tenured faculty position effective November 17, 2017, and CWU hereby accepts Faculty Member's resignation.

2.2 Withdrawal of Termination Notice. CWU agrees to withdraw and to expunge from all CWU records that notice of Faculty Member's termination dated November 17, 2017.

2.3 Letter of Recommendation. CWU and Faculty Member will cooperate in drafting a mutually agreeable letter of recommendation. Oral inquiries from potential employers will be referred to the Faculty Relations Coordinator (or successor position) in the Office of the Provost who will state that Faculty Member has asked the Faculty Relations Coordinator only to read the letter of reference over the phone.

2.4 Withdrawal of Grievance. The parties mutually agree to the withdrawal of Grievance 17-07G filed by UFC on December 17, 2017, and to the cancellation of the pending arbitration relating thereto.

2.5 Representation. Faculty Member acknowledges that Faculty Member has the right to consult with a faculty union representative, attorney, or other advisors concerning any consequences of this Agreement. CWU makes no representations and gives no advice to Faculty Member in regard to any consequences hereof.

3. Release of Claims.

3.1 Apart from Grievance 17-07G referenced in ¶ 2.4 above, which is hereby withdrawn, Faculty Member represents that Faculty Member has not filed, and Faculty Member agrees not to file in the future, any grievance, complaint, charge, or action of any kind in any court of law, or under any employment contract or collective bargaining agreement, wherein there is any allegation of wrongdoing of any kind by CWU or by any current or former trustee, officer, employee, or agent of CWU with respect to any claim or cause of action of any type existing as of the effective date of this Agreement and arising from or in connection with Faculty Member's employment at CWU or the termination thereof.

3.2 As of the effective date of this Agreement, Faculty Member knowingly, voluntarily, and irrevocably **WAIVES AND RELEASES** each and every claim and right of any



November 17, 2017

To Whom It May Concern:

Dr. Brian Carroll worked in Central Washington University's Department of History from fall quarter 2010 through the fall of 2017, first as a visiting assistant professor and then, from 2012, on the tenure track. He was tenured in 2016 and promoted to associate professor. The usual timeframe to complete tenure requirements at CWU is six years. Carroll went up for tenure early, earning it in only four years. Jason Knirck, the acting department chair at the time of his tenure review, had this to say about him:

He is an effective teacher and scholar who produces important publications and sophisticated, multifaceted classes. He brings to the department knowledge of a variety of important content areas, and his versatility and flexibility are much appreciated by students and colleagues alike. He has made significant contributions to our graduate and undergraduate programs over his six years here, and we are lucky to have someone of his caliber in our department. I fully and unreservedly recommend him for tenure and promotion.

In short, during his time at CWU, Dr. Carroll was hardworking, productive and collegial.

Dr. Carroll's scholarship shows past accomplishment and great future potential. He already had several works published before coming to the university. In his first year as a tenure track faculty member, he published an article in the *New England Quarterly*, and in 2015-2016 published two additional articles in *Connecticut History Review* and *Early American Studies*. He also had a piece that appeared in a published conference proceeding and was a contributing editor for an online document reader for Oxford University Press. Carroll's scholarship on Native American military customs in the colonial Northeast explores how, over the course of the late-seventeenth through the mid-eighteenth centuries, Native American military service in colonial armies went from a mutual-advantageous negotiation, showing significant cultural flexibility and adaptability on the part of Native men, to an environment shaped more by hardening colonial racial boundaries, and economic exploitation and dependence. Such work invites an audience of scholars not only in early American history but also of race, gender, and empire. He is currently revising a manuscript on the topic for the University of Massachusetts Press.

Carroll's research agenda for the future is equally ambitious. He is in the early stages of a monograph on the intersection between early American folklore and medical practice, related to the transmission of vampire belief from Europe to North America. He has given numerous presentations and invited lectures on the topic. He has also served as a peer reviewer for several key publications and authored nine book reviews, many published in premier academic journals. He has also been involved in a number of digital history projects during this same period. Carroll's research has always attracted highly competitive grants, such as those he received from the American Antiquarian Society, Harvard University, the Huntington Library, and the John Carter

Office of the Provost/Vice President for Academic and Student Life

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EEO/AA/TITLE IX INSTITUTION • FOR ACCOMMODATION E-MAIL: ds@cwu.edu



Brown library at Brown University. For all of his scholarly achievements, he was awarded our college's Outstanding Faculty Research Award in 2013.

When hired in 2010, Carroll was already a seasoned educator, and his teaching showed thoughtfulness and maturity. In addition to our U.S. history surveys, he taught a wide variety of upper-division courses on colonial North America and Native American history, including three of his own design as well as courses on Public History and Environmental History. He was also a regular instructor for our interdisciplinary American Indian Studies program, and his course "American Manhood in Historical Perspective" was cross-listed in Women's Studies. He also offered several graduate seminars. Carroll's syllabi articulated clear standards and expectations for students, and provided detailed instructions for all assignments. His course assignments ranged from response papers to analytical essays, and offered students opportunities for revision. His classes incorporated frequent discussions and organized debates, and even the occasional role-playing exercise. And his courses made excellent and creative use of available instructional technology, such as podcasts, websites, and online discussion boards in addition to film. Indeed, one of his tenure reviewers stated, "I was particularly struck by the variety of methods that Brian uses to communicate material and assess student learning." Such strategies showed a multidimensional approach to learning that is a sign of good teaching. Beyond the classroom, Carroll was an active mentor in undergraduate and graduate research. In the latter role he directed several outstanding graduate theses and served on numerous M.A. committees.

In all of Carroll's classes, the students generally shared the same positive response of his teaching and mentorship. His numerical student evaluation scores were consistently at or near department and college norms, and student appreciated his energy, enthusiasm and humor.

No less impressive were Carroll's service activities, given his years in rank, heavy teaching load and ambitious research agenda. Carroll redesigned and maintained our department website, and served as our undergraduate director. He organized many events to showcase undergraduate research, and helped the history department as chair of the recruitment and retention committee. In 2016 he became director of our interdisciplinary American Indian Studies program. Carroll's service did not end at the university gates. His community service included substantial contributions to the Thorp Mill Historical Society and the Kittitas County History Roundtable. These venues were outlets for his valuable training in public history, for showcasing the History Department to the community, and raising local historical awareness.

In closing, Carroll has considerable accomplishments in professional teaching, research, and service. Other history faculty found him to be an amiable colleague who willingly shouldered team burdens along with his own responsibilities.

Sincerely,

Katherine P. Frank
Provost/VP for Academic & Student Life

Office of the Provost/Vice President for Academic and Student Life

400 East University Way • Ellensburg WA 98926-7503 • Office: 509-963-1400 • Fax: 509-963-2025
Barge 302 • E-mail: provost@cwu.edu • Web: www.cwu.edu/provost

EEO/A/TITLE IX INSTITUTION • FOR ACCOMMODATION E-MAIL: DS@CWU.EDU

Charlene Andrews

From: Matthew Altman
Sent: Friday, November 17, 2017 6:23 PM
To: Charlene Andrews
Cc: Katherine Frank; gmcneil@washingtonaea.org
Subject: Information request

Charlene --

As I mentioned at our meeting today, UFC us requesting some information as we decide how to proceed with the Brian Carroll termination. We would like information on how other conflict of interest cases have been dealt with in the past, back to 2006 (or whenever the first CBA was put into place at Central). You had mentioned that there were a lot of conflict of interest cases that are not parallel. Let's start with information about parallel cases: when faculty members had consensual relations with students and failed to disclose it. How were those cases handled? What kind of discipline was given? If we need to expand the request, we may do so later.

Because our next action regarding this incident will be informed by the information you provide to us, please keep in mind that we may require an extension in forming our response/possible grievance, depending on when you provide us the information.

Let me know if you have any questions.

Thanks,
Matt Altman, UFC President

Dr. Matthew C. Altman, Chair
Department of Philosophy & Religious Studies
Central Washington University
400 E. University Way
Ellensburg, WA 98926-7555
Phone: (509) 963-2839
Email: matthew.altman@cwu.edu

Charlene Andrews

From: Matthew Altman
Sent: Monday, November 27, 2017 4:02 PM
To: Charlene Andrews
Cc: Katherine Frank; gmcneil@washingtorea.org
Subject: Re: Information request

Charlene --

This is a follow up information request as we decide how to proceed with the Brian Carroll termination. In response to our first request (below), you indicated that there are no parallel cases. Therefore, we would like information on how other conflict of interest cases have been dealt with in the past, back to 2006 (or whenever the first CBA was put into place at Central). How were those cases handled? What kind of discipline was given, if any?

Because our next action regarding this incident will be informed by the information you provide to us, please keep in mind that we may require an extension in forming our response/possible grievance, depending on when you provide us the information. Please keep us informed about how much time you will need to complete the request.

Let me know if you have any questions.

Thanks,
Matt Altman, UFC President

Dr. Matthew C. Altman, Chair
Department of Philosophy & Religious Studies
Central Washington University
400 E. University Way
Ellensburg, WA 98926-7555
Phone: (509) 963-2839
Email: matthew.altman@cwu.edu

From: Matthew Altman
Sent: Friday, November 17, 2017 6:22 PM
To: Charlene Andrews
Cc: Katherine Frank; gmcneil@washingtorea.org
Subject: Information request

Charlene --

As I mentioned at our meeting today, UFC us requesting some information as we decide how to proceed with the Brian Carroll termination. We would like information on how other conflict of interest cases have been dealt with in the past, back to 2006 (or whenever the first CBA was put into place at Central). You had mentioned that there were a lot of conflict of interest cases that are not parallel. Let's start with information

Grievance # 17-07 G

OFFICIAL GRIEVANCE FORM

United Faculty of Central CWU

RECEIVED

Local: UFC

Date filed: 12/12/17

Name of Grievant(s): Brian Carroll

Classification: Faculty

Agency or Higher Education Institution: CWU

Chair: Roxanne Hasley

College/Depl.: CAH/History

Dean or Director: Todd Shiver

OFFICE OF THE PROVOST

Directions: Any faculty who desire to file a grievance must consult with a Union Representative (Steward/Chief Steward or President) who will complete this form and sign it, in accordance with the grievance procedure.

Article(s) and Section(s) of the CBA violated: Articles 7.4 and 16

Check one: Grievance Complaint

NATURE OF THIS GRIEVANCE AND FACTS UPON WHICH THE GRIEVANCE IS BASED: (State briefly but fully pertinent information such as date, place, who caused the action objected to (if known) and relevant inequitable or unfair treatment. Use additional sheet if necessary. Number of attached sheets: 3

Please see attached.

SPECIFIC REMEDY REQUESTED:

Please see attached.

 12/12/17

Name & Title of Employer Representative Receiving Grievance

Date

 12/12/17

Signature of Employer Representative

Date

Charlene Andrews, Faculty Relations

C.E. Andrews 12/12/17

Distribution: Employee Representative(s) Grievant; Steward; Dean; AVP for Faculty Affairs

Chery Byers

From: provost@cwu.edu
Sent: Tuesday, December 12, 2017 3:45 PM
To: Charlene Andrews
Subject: Attached Image
Attachments: 0384_001.pdf



TO: Katherine Frank, Provost and Vice President for Academic and Student Life
CC: Charlene Andrews, Office of Faculty Relations
FR: Matthew Altman, UFC President
Gary McNeil, Organizer, WEA
RE: **GRIEVANCE 17-07G: Brian Carroll, History**

12 December 2017

Articles and Sections of the CBA Violated

Article 14

Article 24 and Just Cause

Any other provision of the CBA that may apply.

Nature of the Grievance and the Facts on which the Grievance Is Based

History. On November 17, 2017, Brian Carroll received a termination letter from Dean Shiver. UFC alleges that CWU did not follow progressive discipline in determining the appropriate level of discipline for a conflict of interest disclosure situation. Therefore UFC alleges there is no just cause for the discipline CWU proposes.

In the November 17, 2017 termination letter, Dean Shiver referenced his decision to terminate based on the seriousness of the allegations, the October 16 investigative report, Dr. Carroll's October 21 letter to Provost Frank, and the information shared during a November 8th pre-disciplinary meeting.

In the October 16 investigative report, Gail Farmer determined that "there is not sufficient evidence to support a finding that any CWU student's Title IX rights were violated or that Carroll violated CWUP 2-35-015 (Equal Opportunity and Affirmative Action Statement)." There was no finding of sexual harassment and/or power differential related to sexual harassment regarding Carroll and CWU students. UFC supports the CBA's zero-tolerance policy regarding sexual harassment and, while ensuring all bargaining unit members have due process rights, we agree that documented acts of sexual harassment warrant serious discipline up to termination.

In the November 17 termination letter, Dean Shiver concludes that Carroll's actions are not related to sexual harassment and violating Title IX. Instead, Carroll's actions are rooted in not following the CBA and CWU policy regarding Conflict of Interest. Shiver quotes Carroll's own statement that acknowledges Carroll did not follow the disclosure/reporting requirements in CBA 14.9. Carroll is straightforward: he did not report a potential conflict of interest in two cases, January-June 2016 and September 2017.

Rationale

According to CBA 14.9, "Any relationship a faculty member has with such a student shall be disclosed, in writing, to the Dean. Failure to disclose a relationship will result in appropriate disciplinary action."

UFC argues that failing to disclose a conflict of interest is not the same as committing an act of sexual harassment. Failure to disclose a conflict of interest does not warrant the same discipline as a sexual harassment case. The seriousness of severe discipline, including termination, for abusive acts and power differential embedded in standards of sexual harassment should not be comparable to a discipline decision of failure to report a conflict of interest to the Dean. The two issues – sexual harassment and not reporting a conflict – are not equal. The October 16 investigative report recognizes this distinction. Termination for failure to disclose a conflict of interest is not an "appropriate disciplinary action."

Specific Remedies Requested

CBA 14.9 does not specify termination and instead references "appropriate disciplinary action."

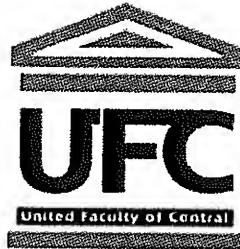
UFC asks for Carroll's reinstatement alongside a last chance agreement on a failure to disclose a conflict of interest. Carroll stated in his response that he will never commit this lack of reporting a conflict of interest again. A last chance agreement would make clear the consequences of not living up to this commitment in the future.

UFC is willing to meet with CWU to discuss the clear distinction between discipline for sexual harassment and discipline for failing to disclose a conflict of interest.

Process

This complaint will start at Level One, as provided by Article 27.5.

The timeline for a Level I grievance started on November 17 and the 30-day response deadline is December 17. This UFC grievance meets the CBA grievance deadline.



TO: Katherine Frank, Provost and Vice President for Academic and Student Life
CC: Charlene Andrews, Office of Faculty Relations
FR: Matthew Altman, UFC President
Gary McNeil, Organizer, WEA
RE: **GRIEVANCE 17-07G – Level 2: Brian Carroll, History**

10 January 2018

Level 2 Grievance

Process

The grievance began at Level 1 as provided by Article 27.4. This is a Level 2 Grievance as described in Article 27.4.

On December 21, 2017, UFC President Matt Altman received a Level 1 Grievance response from Dean Shiver denying the grievance. WEA Organizer Gary McNeil contacted Charlene Andrews, CWU Faculty Relations, to establish the Level 2 timeline deadline. Both parties agreed to a January 12, 2018 deadline. This Level 2 grievance meets the January 12 deadline, so it meets the timelines specified in Article 27.4.

Articles and Sections of the CBA Violated

Article 14

Article 24 and Just Cause

Any other provision of the CBA that may apply.

Nature of the Grievance and the Facts on which the Grievance is Based

UFC is submitting the original Level 1 Grievance to the Provost because we believe it details the argument for following the CBA regarding progressive discipline, just cause, and the appropriate discipline in Article 14. (See attached.)

In summary, UFC argues the CWU October 16 investigative report by Gail Farmer concluded "there is not sufficient evidence to support a finding that any CWU student's Title IX rights were violated or that Carroll violated CWUP 2-35-015 (Equal Opportunity and Affirmative Action Statement)." UFC also wrote in the Level 1 Grievance: "UFC supports the CBA's zero-tolerance policy regarding sexual harassment and, while ensuring all bargaining unit members have due process rights, we agree that documented acts of sexual harassment warrant serious discipline up to termination."

The core issue is failure to disclose a conflict of interest and determining the “appropriate disciplinary action” in Article 14. UFC argues that failure to report a conflict of interest is not equal to documented acts of sexual harassment and should not receive parallel discipline.

Dean Shiver discounted Gail Farmer’s investigation report, which found that there were no Title IX violations. The investigation report stands on its own merit, regardless of what Dean Shiver feels. The issue is about the failure to report a conflict of interest referenced in Article 14.

One could argue, in fact, that Dean Shiver’s attempt to construe this – wrongly – as a Title IX violation is a tacit admission that failure to disclose a conflict of interest does not justify termination. That is, Dean Shiver is conceding that he has to make this into a Title IX violation in order for termination not to be disproportionate to the charge, so he claims there is a Title IX violation even though doing so contradicts CWU’s own investigative findings.

More troubling, Dean Shiver also dismissed the serious remedy that UFC proposed – reinstatement with a last chance agreement. Dean Shiver says that UFC considers Carroll’s offense to be merely a “paperwork violation.” This is not the case. We recognize the seriousness of the offense, which is why we recommend a serious consequence. A paperwork violation would not warrant the serious remedy we are suggesting. A last chance agreement means one last chance of employment, which is very serious.

Remedy

Our proposed remedy remains what it is in our Level 1 grievance: Carroll’s reinstatement alongside a last chance agreement on a failure to disclose a conflict of interest. UFC is willing to continue the discussion with the Provost regarding the appropriate progressive discipline step, excepting termination, related to this case. An extended suspension without pay, along with the last chance agreement, is more appropriate given the result of CWU’s investigation.

UFC asks to meet with the Provost and Assistant Attorney General to discuss the clear distinction between discipline for sexual harassment and discipline for failing to disclose a conflict of interest. UFC believes UFC and CWU should resolve this grievance on campus before we consider advancing the grievance off campus for arbitration at the Level 3 step.

Chery Byers

From: Matthew Altman
Sent: Wednesday, January 10, 2018 2:39 PM
To: Charlene Andrews
Cc: Katherine Frank
Subject: RE: Scanned Grievance Form
Attachments: Grievance 17-07 level 2 Carroll.pdf

Charlene –

Here's an electronic copy of the Level 2 grievance.

Matt

Dr. Matthew C. Altman, Chair
Department of Philosophy & Religious Studies
Central Washington University
400 E. University Way
Ellensburg, WA 98926-7555
Phone: (509) 963-2839
Email: matthew.altman@cwu.edu

From: Charlene Andrews
Sent: Wednesday, January 10, 2018 1:46 PM
To: Anne Smethurst <Anne.Smethurst@cwu.edu>; Matthew Altman <AltmanM@cwu.edu>
Subject: RE: Scanned Grievance Form

Thank you, Anne.

From: Anne Smethurst
Sent: Wednesday, January 10, 2018 1:39 PM
To: Charlene Andrews <Charlene.Andrews@cwu.edu>; Matthew Altman <AltmanM@cwu.edu>
Subject: Scanned Grievance Form

Attached is the scanned grievance form, as requested.

Best,
Anne

Anne Smethurst
Administrative Assistant

Provost/Vice President for Academic & Student Life
Central Washington University
400 E University Way
Ellensburg, WA 98926-7503
Phone: 509-963-1400
Fax: 509-963-2025
Web: www.cwu.edu/provost

> IP Port: 63494
> Protocol: BitTorrent
> Torrent InfoHash: 0A8643DEE7FF4D22A3BC9F1561EFE2AD38CACEBD
> Containing file(s):
> The Other Guys.avi.torrent (611,171,814 bytes)
>
>
>
>



January 16, 2018

Matthew Altman, UFC President
Gary McNeil, WEA Organizer

RE: GRIEVANCE 17-07G—LEVEL TWO RESPONSE

Dear Matt and Gary:

I have reviewed your Level Two grievance and Dean Shiver's response to the Level One grievance. I concur with the Dean's response and while I think his point was clear enough, let me try to restate it.

The issue here is not Professor Carroll's failure to report a conflict of interest as such. The issue is that Professor Carroll knowingly put himself in, and then failed to disengage himself from, a conflicted position with respect to students with whom he was having (in the case of Student #1) or had had (Student #2) a sexual relationship. The purpose of reporting a conflict is to avoid the conflict, to prevent it from occurring. The result of Professor Carroll's failure to report was that he continued in a position of professional responsibility with respect to students with whom he was or had been sexually involved. It is this result of the failure to report, not the failure to report itself, that constitutes the serious violation of our professional ethics policies.

As Dean Shiver discusses in some detail, the conflict of interest, particularly with respect to Student #1, had serious negative consequences for Professor Carroll's colleagues (including his wife), for other students, and for his academic program. It does not really matter whether we characterize these negative impacts as the result of third-party sexual harassment or as the result of the ethics policy violation. The negative impacts were real, they were serious, and they were the direct result of Professor Carroll's participation in prohibited sexual relations with students in violation of our conflicts of interest policies.

I appreciate the UFC's willingness at this Level Two grievance to entertain the remedy of an "extended suspension without pay," along with a last chance agreement, as an alternative to reinstatement. By "extended suspension," I understand you to mean, based on our previous informal conversations, a suspension in the range of one to two years. My concern with this proposed remedy is two-fold.

First, while I am not aware of other faculty who have been investigated or disciplined for ethics violations, two senior administrators subject to dismissal "for cause" standards have recently been dismissed for violations of our ethics policies. One involved an administrator's acceptance



of gifts, not of any great intrinsic value, from a contractor. The other involved an administrator's use of his/her position to exempt him/herself from paying late fees on amounts owed to the university. Both were employees whose services were otherwise highly valued. Both were dismissed from their administrative positions without offering them a last chance agreement. More importantly, neither of them had committed violations that could be considered as serious as the ethical violations at issue here.

My second concern with an extended suspension and last chance agreement is that Professor Carroll has caused serious harm to his academic program that could not be undone, and could only be aggravated, by his eventual reinstatement. Our focus going forward needs to be on repairing the damage and reestablishing a working and learning environment that is more conducive to effective teaching and learning.

The Level Two grievance is denied. I appreciate the UFC's offer to meet with me and with our Assistant Attorney General. However, I have met with you both on two previous occasions, on December 12 and again on January 10. We have thoroughly discussed the issues both in those meetings and through these grievances procedures.

Sincerely,

Katherine P. Frank
Provost / Vice President for Academic and Student Life

cc: Todd Shiver, Dean
Charlene Andrews, Faculty Relations
Alan Smith, Assistant Attorney General

ERIC R. HANSEN
Attorney at Law

P.O. Box 9100
Federal Way, WA 98063-9100
253-765-7024 / Fax 253-946-7232
ehansen@washingtonea.org

January 24, 2018

Katherine P. Frank, Provost
Central Washington University
400 East University Way
Ellensburg, Washington 98926-7503

Re: Brian Carroll

Dear Ms. Frank:

I am an attorney representing the United Faculty of Central (UFC) with regard to a grievance filed by Gary McNeil and Matt Altman on December 12, 2017 (attached hereto) concerning the termination of Brian Carroll. This is to demand an arbitration of Mr. Carroll's grievance, pursuant to section 27.4.3 of the current collective bargaining agreement between UFC and Central Washington University. I am also requesting that Howell Lankford be appointed as the arbitrator.

I understand that Alan Smith, Assistant Attorney General, will be representing Central Washington University in this matter. I trust that Mr. Smith will be contacting me regarding the appointment of an arbitrator within five days of your receipt of this letter so that an arbitrator can be agreed to under section 27.4.3(b) of the collective bargaining agreement.

Sincerely,



Eric R. Hansen

ERH/rls

cc: James Gaudino
Charlene Andrews
Alan Smith

Chery Byers

From: Eric Hansen [WA] <EHansen@WashingtonEA.org>
Sent: Tuesday, January 30, 2018 10:55 AM
To: Katherine Frank
Cc: Charlene Andrews; James Gaudino; CWU President; Matthew Altman; Matthew Altman; Gary McNeil [WA]; Alan Smith_ATG
Subject: FW: Scan from a Xerox Color
Attachments: img-130104748-0001.pdf

Attached please find a demand for arbitration for the grievances filed on behalf of Brian Carroll regarding his termination. Please acknowledge your receipt of these documents and contact me if you have any difficulty accessing them. Thank you. Eric Hansen

-----Original Message-----

From: Color 560 [mailto:xeroxscan@washingtonea.loc]
Sent: Tuesday, January 30, 2018 10:48 AM
To: Eric Hansen [WA] <EHansen@WashingtonEA.org>
Subject: Scan from a Xerox Color

Please open the attached document. It was scanned and sent to you using a Xerox Color.

Number of Images: 5

Attachment File Type: PDF

Device Name: Color 560

Device Location:

For more information on Xerox products and solutions, please visit <http://www.xerox.com/>

Chery Byers

From: Katherine Frank
Sent: Wednesday, February 14, 2018 6:21 PM
To: Alan Smith_ATG
Cc: Charlene Andrews
Subject: Fwd: Question about Thorp Mill Assistantship conflict

Alan:

Please see below. [2] I am out of town on business, but I can make myself available for a phone call, if necessary, between 8:00-9:00 or 12:15-1:15 your time tomorrow. Please let me know if you would like to touch base via phone.

Thanks,

Katherine

Sent from my iPad

Begin forwarded message:

From: Katherine Frank <Katherine.P.Frank@cwu.edu>
Date: February 14, 2018 at 9:13:44 PM EST
To: Daniel Herman <Daniel.Herman@cwu.edu>
Cc: Kevin Archer <Kevin.Archer@cwu.edu>, Roxanne Easley <Roxanne.Easley@cwu.edu>
Subject: Re: Question about Thorp Mill Assistantship conflict

Thank you for the information, Dan.

Best,

Katherine

Sent from my iPad

On Feb 14, 2018, at 6:43 PM, Daniel Herman <Daniel.Herman@cwu.edu> wrote:

Dear Provost Frank and Dean Archer,

For a decade or more, CWU has had an MOU with the Thorp Mill board of directors whereby the Office of Graduate Studies allocates funds to pay for a Thorp Mill Graduate Assistant. The assistant—usually drawn from the REM M.S. program and sometimes from the History M.A. program—works with the board of directors in organizing the Mill's yearly fundraising auction, helping with grant writing, and other matters.

One of History's graduate student who currently sits on the board has come to my office to ask whether the university might have concerns about this arrangement. The student notes that the Thorp graduate assistant—whoever it might be—will be working under the supervision (whether direct or indirect) of one of CWU's former faculty members, Dr. Brian Carroll, who continues to sit on Thorp Mill's board of directors.

I have made it my policy not to discuss Dr. Carroll's case, since I don't know all the particulars, and am not sure whether I am a liberty to discuss it anyway. Nevertheless, I thought I'd better bring this matter to your attention, in case the university has objections to the G.A. arrangement with Thorp Mill. I offer no opinion on the matter one way or the other ... I am only following up by alerting you to a potential concern.

Dan

Daniel Herman
Professor and Graduate Coordinator
Department of History
Central Washington University
509-963-1755 (work)
hermand@cwu.edu

Chery Byers

From: Smith, Alan (ATG) <Alans@ATG.WA.GOV>
Sent: Wednesday, March 21, 2018 1:50 PM
To: Katherine Frank
Cc: Charlene Andrews
Subject: Brian Carroll Settlement

ATTORNEY-CLIENT PRIVILEGE

Forwarding to you a settlement offer in the Brian Carroll matter.

Alan

ALAN SMITH
Assistant Attorney General
800 Fifth Avenue #2000
Seattle, WA 98104-3188
206-389-2099
alans@atg.wa.gov

From: Eric Hansen [WA] <EHansen@WashingtonEA.org>
Sent: Wednesday, March 21, 2018 1:33 PM
To: Smith, Alan (ATG) <Alans@ATG.WA.GOV>
Cc: Gary McNeil [WA] <GMcNeil@WashingtonEA.org>
Subject: FW: Settlement

Alan – This is to advise you that Dr. Carroll would be willing to settle the arbitration schedule for June under the following terms:

CWU and Dr. Carroll will enter into a last chance agreement with the following provisions:

1. Dr. Carroll will be suspended without pay for winter and spring quarters of 2018.
2. Dr. Carroll will return to work in the fall of 2018 as a tenured professor in the History Department.
3. Dr. Carroll will review his list of students in each of his classes at the start of each quarter. If he has a conflict of interest with a student as described in section 14.9 of the collective bargaining agreement, he will report the conflict to the Dean or Provost.
4. Dr. Carroll's university service will be limited to service without student participants.
5. Dr. Carroll may meet with students in open spaces or offices without closed doors.
6. Dr. Carroll will have annual training concerning conflicts of interests with students.

7. The Last Chance Agreement will be five years in duration.
8. Dr. Carroll agrees that a material violation of the Last Chance Agreement will result in termination. However, he reserves the right to have an arbitrator determine whether he materially breached the agreement.

Please get back to me after you have had a chance to discuss these terms with the University. Thanks. Eric

RESIGNATION AND RELEASE AGREEMENT

This RESIGNATION AND RELEASE AGREEMENT ("Agreement") is entered into by and between CENTRAL WASHINGTON UNIVERSITY ("CWU"), CWU faculty member BRIAN CARROLL ("Faculty Member"), and UNITED FACULTY OF CENTRAL WASHINGTON UNIVERSITY ("UFC").

1. Recitals. This Agreement is made in consideration of the mutual undertakings set forth herein and is intended to settle all actual or potential disputes or claims that may arise from or relate to the employment relationship between CWU and Faculty Member, and the termination thereof.

2. Settlement Terms. Faculty Member, CWU, and UFC hereby agree to the following settlement terms. Such terms shall be Faculty Member's sole and complete consideration from CWU in return for Faculty Member's release of claims.

2.1 Resignation. Faculty Member offers to resign Faculty Member's tenured faculty position effective November 17, 2017, and CWU hereby accepts Faculty Member's resignation.

2.2 Withdrawal of Termination Notice. CWU agrees to withdraw and to expunge from all CWU records that notice of Faculty Member's termination dated November 17, 2017.

2.3 Letter of Recommendation. CWU and Faculty Member will cooperate in drafting a mutually agreeable letter of recommendation. Oral inquiries from potential employers will be referred to the Faculty Relations Coordinator (or successor position) in the Office of the Provost who will state that Faculty Member has asked the Faculty Relations Coordinator only to read the letter of reference over the phone.

2.4 Withdrawal of Grievance. The parties mutually agree to the withdrawal of Grievance 17-07G filed by UFC on December 17, 2017, and to the cancellation of the pending arbitration relating thereto.

2.5 Representation. Faculty Member acknowledges that Faculty Member has the right to consult with a faculty union representative, attorney, or other advisors concerning any consequences of this Agreement. CWU makes no representations and gives no advice to Faculty Member in regard to any consequences hereof.

3. Release of Claims.

3.1 Apart from Grievance 17-07G referenced in ¶ 2.4 above, which is hereby withdrawn, Faculty Member represents that Faculty Member has not filed, and Faculty Member agrees not to file in the future, any grievance, complaint, charge, or action of any kind in any court of law, or under any employment contract or collective bargaining agreement, wherein there is any allegation of wrongdoing of any kind by CWU or by any current or former trustee, officer, employee, or agent of CWU with respect to any claim or cause of action of any type existing as of the effective date of this Agreement and arising from or in connection with Faculty Member's employment at CWU or the termination thereof.

3.2 As of the effective date of this Agreement, Faculty Member knowingly, voluntarily, and irrevocably **WAIVES AND RELEASES** each and every claim and right of any

9. Effective Date. This Agreement shall become effective upon expiration of the seven-day revocation period following Faculty Member's execution of the Agreement.

10. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original and which together shall constitute one and the same instrument.

FOR FACULTY MEMBER:

BRIAN CARROLL

DATE

FOR CENTRAL WASHINGTON UNIVERSITY:

KATHERINE P. FRANK

DATE

Provost / Vice President for Academic and Student Life

FOR UNITED FACULTY OF CENTRAL WASHINGTON UNIVERSITY:



MATTHEW C. ALTMAN

President

4/20/18

DATE

Approved as to Form:
Assistant Attorney General
April 2018

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BRIAN CARROLL

DATE

FOR CENTRAL WASHINGTON UNIVERSITY:

Katherine P. Frank

KATHERINE P. FRANK
Provost / Vice President for Academic and Student Life

4/19/18

DATE

FOR UNITED FACULTY OF CENTRAL WASHINGTON UNIVERSITY:

MATTHEW C. ALTMAN
President

DATE

Approved as to Form:
Assistant Attorney General
April 2018

kind whatsoever that Faculty Member may have against CWU or any current or former trustee, officer, employee, or agent of CWU arising from or in connection with Faculty Member's employment at CWU or the termination thereof. The claims and rights thus waived and released by Faculty Member include, **but are not limited to**, every claim and right arising in tort or under any contract, including any individual employment contract or collective bargaining agreement, or under any statute, including every claim of alleged wrongful discharge, retaliation, or unlawful discrimination, whether on the basis of age, race, gender, disability, protected activity, or otherwise. Faculty Member makes and gives this waiver and release on the basis of all current facts, known and unknown, and regardless of possible misunderstandings or undiscovered facts.

3.3 Without limiting the generality of the foregoing, Faculty Member specifically waives and releases any claims arising under the **Age Discrimination in Employment Act (ADEA)**, 29 U.S.C. § 623 *et seq.*; **Title VII of the Civil Rights Act of 1964**, 20 U.S.C. § 2000 *et seq.*; **Title I of the Americans with Disabilities Act**, 42 U.S.C. § 12111 *et seq.*; and the **Washington Law Against Discrimination**, RCW 49.60. Faculty Member acknowledges that without the foregoing waiver and release of claims, Faculty Member would not be entitled to a substantial part of the consideration received under this Agreement.

4. Complete Agreement; Modification. This Agreement constitutes the entire agreement of the parties and supersedes any and all other agreements, understandings, negotiations and discussions, oral or written, express or implied. The parties agree that no other representations, inducements, promises, agreements, or warranties relating to this Agreement, oral or otherwise, have been made to or by them. No modification or waiver of this Agreement shall be valid or binding unless signed in writing by the parties.

5. Governing Law; Venue; Severability. This Agreement shall be governed by the laws of the State of Washington. Venue for any dispute under this Agreement shall be in the Kittitas County Superior Court. If any provision of this Agreement shall be held invalid, such invalidity shall not affect the other provisions of this Agreement that can be given effect without the invalid provision, if such remainder is consistent with applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

6. Waiver. The waiver by a party of any default or breach of this Agreement, or the failure of a party to enforce any provision hereof or to exercise any right or privilege hereunder, shall not be deemed to waive any prior or subsequent breach or default, the enforcement of any provision hereof, or the exercise of any right or privilege hereunder, unless otherwise stated in a writing signed by an authorized representative of the party and attached to the original Agreement.

7. Review and Revocation Periods. Faculty Member acknowledges having received this Agreement in substantially similar form on or about **April 11, 2018**. Faculty Member agrees that Faculty Member has had an opportunity to consult with an attorney or other advisors and has been given a satisfactory period to consider this Agreement before signing it. Specifically, Faculty Member is hereby afforded up to twenty-one (21) calendar days to consider this Agreement, and Faculty Member will have seven (7) calendar days after signing to revoke the Agreement by providing written notice to CWU's Office of Human Resources.

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Subject: Canvas Courses
Date: Wednesday, April 18, 2018 at 4:09:01 PM Pacific Daylight Time
From: Charlene Andrews
To: Delayna Breckon
CC: Charlene Andrews
Attachments: Image001.jpg

Hi Delayna,

Please see the following for Brian Carroll's course information:

Dr. Carroll is looking for exported versions of the following history courses. He informs me that Canvas courses can be exported and saved as external files that can later be imported back into Canvas at a later time:

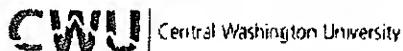
143 (Spring 15) ✓ US history to 1865
144 (winter 17) ✓ US hist since 1865
301 (summer 17) ✓ pnw history
302 (fall 14) ✓ historical methods
314 (winter 17 and summer 17) military history of US ✓ military history of US (1) ✓
339 (fall 13) - NO content
341 (fall 14) ✓ constitution & the new repub
344 (fall 15) American manhood
434 (spring 16) American Indian hist to 1785 ✓
440 (fall 16) American Revolution ✓
445 (spring 17) Intro to Public History ✓
454 (spring 14) NO Content
512 (spring 15) grad - reading - sem ✓
512 (winter 16) grad - reading - sem II ✓
515 (spring 16) hist - grad - res sem ~~II~~

How long does it take to do this? Do you need a flash drive from us? I have one I can run over, if needed.

Thanks,
Charlene

Charlene Andrews
Faculty Relations Coordinator

Office of the Provost/VP for Academic and Student Life
400 East University Way
Ellensburg, WA 98926-7503
Barge Hall, Room 302
Office: (509) 963-1271 * Fax: (509) 963-2025



9. **Effective Date.** This Agreement shall become effective upon expiration of the seven-day revocation period following Faculty Member's execution of the Agreement.

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FOR FACULTY MEMBER:


BRIAN CARROLL

4/19/2018
DATE

FOR CENTRAL WASHINGTON UNIVERSITY:

KATHERINE P. FRANK
Provost / Vice President for Academic and Student Life

DATE

FOR UNITED FACULTY OF CENTRAL WASHINGTON UNIVERSITY:

MATTHEW C. ALTMAN
President

DATE

Approved as to Form:
Assistant Attorney General
April 2018

kind whatsoever that Faculty Member may have against CWU or any current or former trustee, officer, employee, or agent of CWU arising from or in connection with Faculty Member's employment at CWU or the termination thereof. The claims and rights thus waived and released by Faculty Member include, but are not limited to, every claim and right arising in tort or under any contract, including any individual employment contract or collective bargaining agreement, or under any statute, including every claim of alleged wrongful discharge, retaliation, or unlawful discrimination, whether on the basis of age, race, gender, disability, protected activity, or otherwise. Faculty Member makes and gives this waiver and release on the basis of all current facts, known and unknown, and regardless of possible misunderstandings or undiscovered facts.

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